

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0220 CS

Controlled Substance Excise Tax

For Tax Period: October 9, 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested on October 9, 1994 for possession of marijuana. The Department then assessed the Controlled Substance Excise Tax against the taxpayer based on the weight of 38.30 grams of marijuana taken from the location where the taxpayer was arrested. Taxpayer's criminal charges were subsequently dismissed by the Dearborn County Court. Taxpayer protests the imposition of the Controlled Substance Excise Tax. Additional facts will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code section 6-7-3-5 provides for the imposition of the controlled substance excise tax on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer was arrested for possession of marijuana when he entered a residence where marijuana was located. Taxpayer protests the imposition of the Controlled Substance Excise Tax and argues he was not in possession of the marijuana and was not living at the residence.

Taxpayer claims he was separated from his wife at the time of the arrest and had left some of his belongings at the residence (occupied by his brother) while he visited his wife and children in Illinois. Taxpayer claims he returned to the residence while the police were executing their search warrant, and he was arrested when he knocked on the door. Taxpayer claims he never had possession of the controlled substances.

The Deputy Prosecuting Attorney of Dearborn County moved to dismiss all charges against the taxpayer for lack of prosecutorial merit. The Deputy Prosecuting Attorney was contacted before the administrative hearing was held in this protest. She stated the charges were dismissed because the prosecuting office did not have enough evidence against the taxpayer, the office believed the taxpayer was not involved in the activities surrounding the controlled substances, and the office believed the taxpayer did not live at the residence. She stated the "fair" conclusion was to dismiss his criminal charges and he should not owe any tax on the controlled substances.

FINDING

Taxpayer's protest is sustained. Taxpayer has proven to the Department's satisfaction that he did not possess any controlled substances which would subject him to the Controlled Substance Excise Tax.